

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

LYNNETTE MASON,

Plaintiff,

vs.

No. CIV-2020-1217-D

STATE FARM MUTUAL AUTOMOBILE
INSURANCE CO., d/b/a STATE FARM
INSURANCE CO., a Foreign
For-Profit Entity,

Defendant.

VIRTUAL VIDEO DEPOSITION OF JAMES HARMON
Taken on Behalf of the Plaintiff
On July 7, 2022, beginning at 10:03 a.m.
All Parties Appearing Remotely Via Zoom

APPEARANCES:

Appearing on behalf of the PLAINTIFF

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EXHIBIT 5

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1 **claims?**

2 A That would have been when I was in Lawton.

3 Q So you have been familiar with first-party
4 bodily injury claims in the State Farm auto policies
5 from the late '90s to present; right?

6 A Yes.

7 MR. ROWE: Jay, that's a good place for us
8 to break. See you guys shortly.

9 MR. ACQUAVIVA: Thank you.

10 THE VIDEOGRAPHER: We're off the record at
11 11:15 a.m.

12 (Off the record)

13 THE VIDEOGRAPHER: We're back on the
14 record at 11:27 a.m.

15 BY MR. ROWE:

16 Q So that last section of testimony before
17 we took our break, Mr. Harmon, was about partly your
18 experience at State Farm, and you talked to us about
19 your tenure as an auto superintendent where you had
20 individual adjusters handling claims under an auto
21 policy, kind of start to finish.

22 If there was one accident in that
23 universe, the auto superintendent universe, late
24 '90s, that involved claims for liability and claims
25 for underinsured or uninsured motorist benefits

1 under the same policy, would that same adjuster be
2 handling both of those claims back at that time?

3 A I believe so, yes.

4 Q So back in the late '90s, State Farm would
5 not have been bifurcating liability claims from UM
6 claims under the same policy?

7 A I don't recall they did, but that's --

8 Q Okay.

9 A That's a long time ago.

10 Q I bet.

11 I would colloquially refer to a situation
12 like that as a double-insured or a single-adjuster
13 type of handling of those two claims. I think in
14 the claims file there's an abbreviation "D/W." That
15 stands for "double width"; is that right?

16 A Correct.

17 Q Okay. But in that time period, in the
18 late '90s or after, State Farm was allowing
19 adjusters to handle those double-width policies,
20 single adjuster, whatever you want to refer to them
21 at, involving both liability claims and UM claims
22 under the same policy; true?

23 A Correct.

24 Q And just for further clarification, those
25 claims that I'm talking about would arise out of the

1 same accident, same policy?

2 A I'm sorry. Could you rephrase the
3 question?

4 Q Sure.

5 A Could you restate your question?

6 Q I muddled that up real good for us, so --
7 in the late '90s, you might encounter a situation
8 where a State Farm insured causes a collision with a
9 State Farm insured that has uninsured motorist
10 benefits, and in that late '90s time period, a
11 single adjuster would handle claims made against the
12 liability policy of the alleged tortfeasor as well
13 as first-party claims made by the claimant under
14 their own UM policy; right?

15 A Correct.

16 Q Okay. Now, at some point after the late
17 '90s, State Farm deviated from that practice of
18 having a single adjuster handle both of those
19 claims; correct?

20 MR. ACQUAVIVA: Object to the form of the
21 question.

22 THE WITNESS: Yes. At some point, we
23 started first-party UIM teams.

24 BY MR. ROWE:

25 Q And those first-party UIM teams would have

1 **been tasked with handling exclusively first-party**
2 **UIM claims; right?**

3 A Correct.

4 **Q Why did State Farm make that change to a**
5 **first-party UM team?**

6 MR. ACQUAVIVA: Object to the form of the
7 question. You're asking a global question of why
8 State Farm did something. Just to be clear, he can
9 testify as to his own personal knowledge as a fact
10 witness, not a company representative.

11 MR. ROWE: Good clarification.

12 BY MR. ROWE:

13 **Q If you know, why did State Farm make that**
14 **change?**

15 A I do not know.

16 **Q Do you know when that change was made?**

17 A Not off the top of my head.

18 **Q There is a point in time sometime after**
19 **the late '90s or in the late '90s when State Farm**
20 **creates a first-party UM team, and at that point,**
21 **were UM claims taken from existing adjusters and**
22 **handled exclusively by that first-party UM team?**

23 A I don't recall, quite honestly. I mean,
24 people were moving all around to new roles, and, you
25 know, some people had elected to, you know, retire,

1 A At some point, yes, that is correct.

2 Q And at some point after the creation of
3 that first-party UM team structure, State Farm began
4 allowing a single adjuster to handle both liability
5 and UM claims simultaneously; correct?

6 A That is correct.

7 Q And in those claims, at the time of
8 Ms. Mason's claims, would have been referred to in a
9 claim file or a claim note as a "DW" or "double
10 width"; correct?

11 A Her claim would have been referred to as a
12 "double width," but there's also other, like,
13 double-width files, like, I believe, Mr. Richardson,
14 who owned the car, we identified his claim as a
15 double width, so that's a little bit broader term
16 than what you define there, so...

17 Q And that's super valuable information. So
18 "double width" is not exclusively used to determine
19 a liability UM claim? It could be a collision, med
20 pay -- any two claims might be a double width?

21 A That's correct.

22 Q Thank you.

23 Approximately when, if you remember, did
24 State Farm move away from the first-party UM team
25 into a situation where they were, again, allowing a

1 **single adjuster to handle liability and UM claims**
2 **arising out of the same collision?**

3 A To the best of my recollection -- and
4 here, again, I'm getting a little bit older as I get
5 up there -- I think it was around maybe 2015.
6 I'm not exactly sure. That's the best of my
7 recollection. About two years before I moved to
8 Texas.

9 Q **I gotcha.**

10 **And is that after injury claim central was**
11 **started?**

12 A Yes. Injury claim central was started in
13 2000.

14 Q **Okay. And at that point, you had been a**
15 **claims manager for -- or a claims superintendent for**
16 **a dozen or more years; right?**

17 A I had been in a leadership position. You
18 said "claim manager." That's not the title I had.
19 That was my boss's boss's title, but a team manager
20 or a superintendent, yes, for several years.

21 Q **As an employee who had long tenured been**
22 **in State Farm leadership handling Oklahoma claims,**
23 **were you provided any reasoning or basis for the**
24 **change from first-party UM structure away from that**
25 **structure?**

1 approximate guess.

2 BY MR. ROWE:

3 Q Approximately 20 to 30 team managers that
4 would have been handling Oklahoma auto claims?

5 A Yes. When we went to the demand pool
6 structure.

7 Q How many of those would have been handling
8 claims involving uninsured motorist benefits made
9 under Oklahoma policies?

10 A At that time, all of us were.

11 Q Okay. How was the transition away from
12 the first-party UM teams communicated to the 20 or
13 30 leadership employees?

14 A I'm not sure I understand your question.
15 Could you -- could you restate it?

16 Q Yeah, you bet.

17 So at some point prior to 2015, State Farm
18 had instituted first-party UM teams; right?

19 A Yes.

20 Q And by the time 2015 gets here, we've got
21 20 to 30 team managers, leadership employees, that
22 are responsible for overseeing the handling of
23 Oklahoma UM claims; right?

24 A Yes.

25 Q And it would seem to me that if the UM

1 A Correct.

2 Q Presuming that there's actually a
3 legitimate claim there and that the State Farm
4 insured was negligent and did cause injuries; right?

5 A Yeah. There's a lot of things packed into
6 that, but, as a general statement, that is correct,
7 yeah.

8 Q Now, in a UM claim, or a claim for
9 benefits under a UM policy, the obligation is to
10 determine whether or not the State Farm insured --
11 let me back up a little bit.

12 In that UM context, one of the first
13 things that State Farm has to do is make an
14 assessment of whether or not there is actually a UM
15 policy that is applicable at the time of loss;
16 right?

17 A Yes. If the policy is in force and has
18 that coverage.

19 Q And presuming that they're able to
20 determine that there is coverage, the policy is in
21 effect at the time of that loss, they've got to go
22 through a similar analysis as to the liability side.
23 They've got to determine, through a reasonable
24 investigation, whether or not the UM insured has
25 been involved in an automobile accident resulting

1 from somebody else's negligence; right?

2 MR. ACQUAVIVA: Object to the form of the
3 question.

4 THE WITNESS: Well, I guess I want to be
5 clear. Could you repeat the question?

6 BY MR. ROWE:

7 Q Sure. When State Farm is handling a UM
8 claim, one of the things they have to do is
9 determine whether or not their UM insured was
10 injured as a result of somebody else's negligence?

11 A I think there's a lot more to it than
12 that, but they have to determine if they were
13 injured, if there's a policy in force that has the
14 coverage, if that party that is negligent is an
15 uninsured motor vehicle or an underinsured motor
16 vehicle.

17 So there's more to it than that, but, I
18 mean, as a general premise, that's basically
19 correct, but there's more to it than that.

20 Is that clear?

21 Q And I think that you're answering my
22 question, and I tried to preface it with one of the
23 things -- and, certainly, I wouldn't be able to --
24 if I just asked you what does State Farm do in a UM
25 claim and you were answering, given your decades of

1 experience doing that, I could ask you one question
2 and we would be here all day and you probably
3 wouldn't have enough time to do it; right? Right?

4 A Correct. There's a lot to it, so...

5 Q Right. But you told me earlier -- and
6 it's something that I think I personally agree with
7 -- is that one of the jobs an insurance company is
8 doing when they're handling a claim for benefits
9 under an auto policy is trying to figure out what a
10 jury would do if they had the information; right?

11 A That's one of the elements, correct.

12 Q And I'm just trying to reduce it down to
13 something a little more easy to understand.

14 If State Farm is handling a UM claim, one
15 of the things that they have to do is go through
16 those elements of negligence and see if their UM
17 insured has a case; right?

18 A Correct.

19 Q And that includes conducting a reasonably
20 thorough investigation to determine whether or not
21 somebody else is at fault for a crash; true?

22 MR. ACQUAVIVA: Object to the form of the
23 question.

24 THE WITNESS: We would need to conduct an
25 investigation that would be reasonable and

1 appropriate based upon the facts of the accident and
2 the circumstances presented.

3 BY MR. ROWE:

4 Q Yeah. One of the things you've got to do
5 is investigate whether or not somebody else is
6 negligent; right?

7 MR. ACQUAVIVA: Object to the form of the
8 question.

9 THE WITNESS: That would be one element.

10 BY MR. ROWE:

11 Q Okay. And presuming that that
12 investigation concludes that a third-party -- that's
13 not the right terminology. I'm going to avoid
14 third-party in this conversation.

15 Presuming State Farm, while investigating
16 or handling a UM claim, gathers information that
17 somebody other than their UM insured was negligent
18 in causing an accident, State Farm then, at some
19 point, has to determine whether or not their UM
20 insured is injured; right?

21 MR. ACQUAVIVA: Object to the form of the
22 question.

23 THE WITNESS: Okay. I'm sorry. Could you
24 repeat the question? Because I want to make sure I
25 answer it correctly.

1 A Yes.

2 Q In the state of Oklahoma, a UM policy
3 that's issued to a State Farm insured can apply if
4 that UM insured is injured in a car crash and the
5 individual responsible doesn't have sufficient
6 liability insurance to cover all of their damages;
7 true?

8 MR. ACQUAVIVA: Object to the form of the
9 question.

10 THE WITNESS: That's correct.

11 BY MR. ROWE:

12 Q That's one circumstance in which UM might
13 apply; right?

14 A That is one circumstance.

15 Q And that would be what some people might
16 call an underinsured situation; right?

17 A Correct.

18 Q Underinsured motorist.

19 Another situation in which UM might apply
20 would be a situation in which a UM insured is
21 injured by the negligence of an individual that has
22 no insurance whatsoever; true?

23 A From what you've described, that is a
24 correct statement.

25 MR. ACQUAVIVA: And, Counsel, just for

1 clarification, the injury or damages you're speaking
2 of are bodily injury, not property injuries?

3 MR. ROWE: Absolutely. I -- just on a
4 side note, doesn't Kansas have uninsured property
5 damage? Isn't that a coverage in Kansas?

6 THE WITNESS: I don't know.

7 MR. ROWE: It's totally immaterial in this
8 conversation.

9 MR. ACQUAVIVA: And just while we're
10 talking about this, you mentioned a UM policy.
11 Technically, I think it's a coverage, not a policy.

12 MR. ROWE: That's a good pickup, Jay. I
13 will refer to the UM as a coverage under a policy,
14 not as a UM policy moving forward.

15 And I don't think there's anything for us
16 to clear up. I think that, when I've said "UM
17 policy" earlier in the deposition, we all understood
18 that to mean UM coverage under a State Farm auto
19 policy. I didn't have any other intention but that.

20 MR. ACQUAVIVA: I think that's a fair
21 understanding.

22 BY MR. ROWE:

23 Q So we've got one situation in which UM
24 would apply being an underinsured situation. We've
25 got a second situation which UM might apply where we

1 have a pure uninsured motorist.

2 There is a third possible situation, in
3 which a State Farm UM insured is injured as the
4 result of a hit-and-run driver; correct?

5 A Correct. Assuming that party remains
6 unknown and they don't find them and they do or do
7 not have coverage, but a pure hit and run, that
8 would be a correct statement.

9 Q And a pure hit-and-run situation can exist
10 if there is a physical impact and the hit-and-run
11 driver leaves the scene; right?

12 A Correct.

13 Q But a hit-and-run driver situation could
14 also exist if there's no vehicle to be able to
15 contact but that another driver causes a crash;
16 true?

17 MR. ACQUAVIVA: Object to the form of the
18 question.

19 THE WITNESS: That is a correct statement
20 from Oklahoma law.

21 BY MR. ROWE:

22 Q And to further clarify that, under
23 Oklahoma law, there's no requirement that there be
24 an impact from a hit and run driver for UM to be
25 applicable; true?

1 A That is correct.

2 Q And sometimes those hit and run drivers
3 that don't make an impact are referred to as
4 "phantom drivers"; right?

5 A I've heard that term used to describe that
6 situation.

7 Q And if a phantom driver is at fault for a
8 collision in which a State Farm UM insured suffers
9 injury, that is similar to a purely uninsured
10 motorist situation; true?

11 A If a phantom driver is at fault for a
12 situation, that could be true, yes.

13 Q Okay. And I want to talk to you for just
14 a moment about the idea of a reasonably thorough
15 investigation conducted on behalf of a State Farm
16 insured.

17 If State Farm has information that a
18 hit-and-run driver might be responsible for a
19 collision, it's responsible -- or its obligation is
20 to conduct an investigation with those facts; true?

21 MR. ACQUAVIVA: Object to the form of the
22 question.

23 THE WITNESS: That would be correct. We
24 would need to conduct an investigation that's
25 reasonable and appropriate for that file.

1 do you tell them, "Well, what's reasonable and
2 appropriate depends on the facts and circumstances"?

3 A If a new adjuster comes to me -- or an old
4 adjuster comes to me and talks about, you know,
5 "What do we need to do on this file? What would be
6 reasonable and appropriate?" You know, we look at
7 the questions we have, what we need to do to answer
8 those questions, and try to resolve the claim.

9 Q So one of the things that defines a
10 reasonable and appropriate investigation would be
11 trying to find the answers to the questions that we
12 have; right?

13 A Yes.

14 Q And at a very high level, some of those
15 questions might be: "Who are the possible negligent
16 parties?" Correct?

17 A At a very high level, correct.

18 Q "Where can we find them?" Correct?

19 A I'm sorry. I didn't quite hear you.

20 Q Where can we find the negligent parties?

21 A You mean, like, physically find them or --

22 Q "Who are they?"

23 A Who are they. Yes.

24 Q "Do they have insurance?"

25 A Yes.

1 Q "What are the liability limits of those
2 insurance policies, if they exist?"

3 A Yes.

4 Q "Is our insured injured in some way?"

5 A Yes.

6 Q "Are there other parties that are injured
7 in some way?"

8 A Yes.

9 Q Any reasonably -- or reasonable and
10 appropriate investigation would look for the answers
11 to those questions?

12 A Yes.

13 Q And using the answers to those
14 questions -- well, I guess I'll just ask it like
15 this: If a State Farm adjuster is satisfied that
16 they have conducted a reasonable and appropriate
17 investigation and gathered facts, what do they do
18 with all those facts?

19 MR. ACQUAVIVA: Object to the form of the
20 question.

21 THE WITNESS: That's a very -- it's a very
22 broad question, what do we do with all the facts,
23 what is the current status of the file. Is this day
24 one where we're trying to establish liability and
25 get the car set up and towed and moved and repairs

1 Q You expect them to seek answers to the
2 questions that they have?

3 A That would be correct.

4 Q Okay. Now, Mr. Harmon, you looked at some
5 documents to prepare for today. I looked at some
6 documents to prepare for today. I would imagine
7 Mr. Acquaviva looked at some documents to prepare
8 for today.

9 I'd like to look at some documents, but
10 before we look at those, it seems like we've got at
11 least three State Farm policies that are implicated
12 in the crash between Ms. Mason and Ms. Harrison;
13 right?

14 A That's correct.

15 Q We've got Ms. Harrison who has a
16 liability -- or who has liability coverage under a
17 State Farm policy; right?

18 A Correct.

19 Q We have Ms. Mason who has a State Farm --

20 A Can I stop you right quick?

21 Q Absolutely.

22 A I think there's four policies, because
23 there's a PLUG policy, so I want to be accurate with
24 that statement. I hate to back up a question or
25 two, but I think there's really four policies that

1 field that should have been a little check box
2 that's clicked. Apparently, it was not clicked.

3 Q This information is inaccurate; correct?

4 A That's correct.

5 Q Ms. Mason was represented by Andrew Gass;
6 true?

7 A Correct.

8 Q Below, we've got some information related
9 to the policy. Mrs. Mason had a \$25,000 UM policy;
10 correct?

11 A Correct. Per person.

12 Q The liability policy that was applicable
13 to the collision that injured her had a limit of
14 \$250,000; correct?

15 A Correct.

16 Q Injury codes are on page 2 of this
17 document?

18 A Correct.

19 Q This would have been information submitted
20 to State Farm and entered prior to this that would
21 have auto-populated this field; right?

22 A That's part -- that's accurate, yes.

23 Q We go into "Injury Description: Cervical
24 disc disorder." These are all of the known injuries
25 to State Farm claimed by Ms. Mason; true?

1 **for Ms. Mason's injuries?**

2 MR. ACQUAVIVA: Object to the form of the
3 question.

4 THE WITNESS: I wasn't involved at that
5 point after the allegation was made by Mr. Gass. I
6 assume that's the question you're asking me.

7 BY MR. ROWE:

8 Q **If the answer is, "I don't know because I**
9 **wasn't involved," I mean, then that's sufficient.**

10 A I don't know because I wasn't involved.

11 Q **There's no dispute in the claim file that**
12 **Mrs. Mason has no liability for the collision; true?**

13 A I agree with that.

14 Q **She is zero at fault?**

15 A I agree.

16 Q **If a phantom driver was one percent at**
17 **fault and Ms. Harrison was 99 percent at fault,**
18 **State Farm would be required under the terms of the**
19 **UM policy issued to Ms. Mason to pay benefits; true?**

20 A If your scenario was found to be in fact
21 true, yes, you're correct.

22 Q **And at this point, State Farm has paid no**
23 **UM benefits to Ms. Mason?**

24 A I'm not involved in that file --

25 MR. ACQUAVIVA: Object. I just couldn't

1 because Ms. Mason's damages were within the
2 liability limits of Ms. Harrison's policy; true?

3 A That's correct.

4 Q Suit was filed much, much farther out.
5 That was a terrible question, but...

6 A Yes. That's my understanding, correct.

7 Q Ms. Mason filed suit against Ms. Harrison
8 long after that letter was mailed by Ms. Behara?

9 A Yes.

10 Q State Farm never took a recorded statement
11 of Ms. Mason on either the liability claim or on the
12 UM claim that she made; true?

13 A Correct.

14 Q But at the time that State Farm began
15 investigating in earnest either of those claims,
16 Mr. Mason was represented by Ms. Gass; true?

17 A Correct.

18 Q Ms. Mason under the terms of her State
19 Farm automobile policy, when making a UM claim, has
20 an obligation to cooperate in any investigation
21 matters that are reasonable as requested by State
22 Farm; true?

23 A Correct.

24 Q State Farm never asked Mr. Gass to take a
25 direct statement from Ms. Mason; correct?

1 A Correct.

2 Q Likewise, State Farm never took a recorded
3 statement of Mrs. Harrison; true?

4 A We spoke to Ms. Harrison. We did not
5 record the conversation, but we spoke to her
6 throughout the file, as we've talked about today.

7 Q As part of that duty to cooperate under a
8 State Farm policy, Ms. Harrison likewise has a duty
9 to cooperate in the investigation of liability
10 claims made against her; true?

11 A Correct.

12 Q And whether it's Mrs. Mason making a UM
13 claim or Ms. Harrison participating in a liability
14 claim, State Farm also has the ability to compel
15 either of those insureds to offer testimony under
16 oath in an Examination Under Oath; correct?

17 A Correct.

18 MR. ACQUAVIVA: Object to the form.

19 BY MR. ROWE:

20 Q State Farm never took an Examination Under
21 Oath of either Mrs. Mason or Mrs. Harrison; true?

22 A You're using the term "Examination Under
23 Oath." They both gave depositions, but, no, they
24 did not give an Examination Under Oath. So I think
25 that's a legal term that I want to make sure I'm